

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CB Radio, Inc.)	File Number EB-02-AT-398
)	
Owner of Unregistered Antenna Structure located at)	NAL/Acct. No.200332480016
36° 20' 07" North Latitude by 82° 13' 03" West)	
Longitude in Elizabethton, Tennessee)	FRN 0007-8859-81
)	
Elizabethton, Tennessee)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 23, 2003

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find CB Radio, Inc. ("CB Radio"), owner of the antenna structure of AM broadcast station WBEJ located at coordinates 36° 20' 07" North Latitude and 82° 13' 03" West Longitude, in Elizabethton, Tennessee, apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Commission's Rules ("Rules").¹ Specifically, we find CB Radio, Inc. apparently liable for failing to register its antenna structure.

II. BACKGROUND

2. On September 25, 2001, an agent of the FCC Enforcement Bureau's Atlanta Field Office ("Atlanta Office") inspected radio station WBEJ(AM). The inspection revealed that the antenna structure of WBEJ(AM) was not registered with the Commission. On October 4, 2001, a Notice of Violation was issued to CB Radio for failure to register the WBEJ(AM) antenna structure with the Commission.

3. On October 29, 2002, an agent of the Atlanta Office inspected radio station WBEJ(AM) and the associated antenna structure located at 36° 20' 07" North Latitude and 82° 13' 03" West Longitude, in Elizabethton, Tennessee. The agent noted that the structure was painted and lighted, however, the structure was not registered with the Commission. The station license for WBEJ(AM) requires that the antenna

¹ 47 C.F.R § 17.4(a).

structure be painted and lighted since it is over 200 feet tall.

III. DISCUSSION

4. Section 17.4(a) of the Rules provides that, effective July 1, 1996, owners of any existing antenna structures that require notification to the Federal Aviation Administration (“FAA”) must register the structure with the Commission. Section 17.4(a)(2) of the Rules provides that, effective July 1, 1998, owners of an antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996, must register the structure with the Commission. CB Radio’s antenna structure required notification to the FAA because the structure exceeded 200 feet in height.² In addition, the structure had been assigned painting and lighting requirements by the FCC on the WBEJ(AM) station license. Therefore, CB Radio’s antenna structure required Commission registration. From at least September 25, 2001 to October 29, 2002, CB Radio’s antenna structure used as part of Station WBEJ(AM) was not registered with the Commission.

5. Based on the evidence before us, we find CB Radio willfully³ and repeatedly⁴ violated Section 17.4(a) of the Rules by failing to register its antenna structure.

6. Pursuant to Section 1.80(b)(4) of the Commission’s Rules,⁵ the base forfeiture amount for failing to register an antenna structure is \$3,000 (failure to file required forms or information). In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ CB Radio has a history of violating the same provision that is the subject of this NAL. Considering the entire record and applying the statutory factors listed above, this case warrants a \$3,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ CB Radio, Inc. is hereby NOTIFIED of this APPARENT LIABILITY

² See 47 C.F.R. § 17.7(a).

³ Section 312(f)(1) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503 (b)(2)(D)

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Rules by failing to register an antenna structure that requires notification to the Federal Aviation Administration.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, CB Radio, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to CB Radio, Inc., 626 ½ E. Elk Avenue, Elizabethton, TN 37643.

FEDERAL COMMUNICATIONS COMMISSION

⁹ See 47 C.F.R. § 1.1914.

Fred L. Broce
District Director
Atlanta Office, Enforcement Bureau